IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 808 of 2002()

CC.598/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD

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APPELLANT: COMPLAINANT:

P. RAMACHANDRAN,
S/O. K.T. SIVARANAMAN NAIR, RESIDING AT
PURAYATH HOUSE, VELUTHEDATHU KULAMBU,
VITHANASSERI, NENMARA, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS: NOT PARY/RESPONDENT:

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1. **THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

2. **K. RAMADAS, S/O. AYYAPPAN, RESIDING AT APSARA VILLA, AMBKIA NAGAR, AKATHETHARA, PALAKKAD.**

BY ADV. SRI.N.K.KARNIS
BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

K.R. UDAYABHANU, J.

CRL.A.NO. 808 OF 2002

DATED THIS THE 24th September 2007

JUDGMENT

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act which happened to be dismissed and the accused acquitted. The case of the complainant is that accused borrowed Rs.60,000/- on 21-11-1999 after executing a pronote and the accused issued the impugned cheque for R.67,000/- on 23-7-2000. The cheque bounced and lawyer notice was sent demanding the amount. The accused has sent a reply notice raising the allegation that the complainant is acting on behalf of one Mr. N.Vasan which is false.

2. The evidence adduced in the matter consisted of the testimony of PW1 and Exts.P1 to P8. The accused himself was examined as DW1 and Exts.D1 to D4 were marked. PW1 has testified with respect to the execution of the cheque and dishonour of the same, issuance of lawyer notice and receipt of reply notice. He has also proved Exts.P1 to P8. Ext.P8 is the ledger extract of the account of the accused which would show that there is no sufficient funds in the account of the accused. It has come out in evidence that Mr.N.Vasan is the brother-in-law of the complainant. The case of the

accused is that he had borrowed a sum of Rs.15,000/- from Mr.Vasan and issued a blank cheque and signed blank papers. He repaid the amount but the cheque and blank papers were not given back. Ext.D1 notice dated 18-7-2000 was sent to Mr.Vasan by courier service demanding return of the cheque and signed papers. Ext.D2 is the reply received from Mr.Vasan denying that he has got anything to do with the accused. The same is dated 7-8-2000. The date of the dishonour memo is 4-8-2000. Evidently after issuing Ext.D1 notice by the accused to Mr.Vasan the impugned cheque was presented and dishonoured. I find that the above is a strong circumstance in favour of the case set up by the defence. I find that the evidence of Dw1 and Exts.D1 to D3 do establish a probable case. In the circumstances, I find no reason to deviate from the finding of the courts below. The appeal is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. NO. 808 OF 2002

JUDGMENT

24-9-2007